

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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ROBERTA BROWN-ADJAMI,

Plaintiff(s),

**ORDER**

-against-

CV 04-3295 (TCP) (WDW)

BIRCHES LAKE LLC., et al.,

Defendant(s).

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**WILLIAM D. WALL, United States Magistrate Judge:**

Defendants have moved by letter application to dismiss this action given plaintiff's failure to prosecute. Although the letter application is dated August 26, 2005 and a copy was mailed to plaintiff that date, it was not electronically filed until September 19, 2005. Docket Entry ("DE") [8]. No opposition has been received from plaintiff. For the reasons stated herein, the motion is denied without prejudice to renew.

The action was commenced on July 30, 2004. By order dated March 10, 2005, the undersigned scheduled an initial conference for April 14, 2005. DE [5]. That order was mailed to plaintiff and enclosed a notice regarding electronic filing requirements as well as a blank ECF registration form. Despite electronic filing and mailing of the March 10<sup>th</sup> order, plaintiff's counsel failed to appear at the April 14<sup>th</sup> conference, claiming never to have received notice. A scheduling order was nonetheless entered, along with an order stating that plaintiff "must register for ECF. Failure to appear again will result in a recommendation of dismissal." DE [6]. To the court's knowledge, plaintiff's counsel has not registered for ECF despite the court's explicit direction to do so.

In the current application, defendants detail plaintiff's dilatory conduct in this case.

Despite written requests from defendants, plaintiff has failed to participate in any discovery, including the most basic of requirements to serve initial disclosures. Defendants also state that plaintiff's counsel fails to return telephone calls. Most recently, plaintiff has failed to respond to the current motion, despite it having been served by mail as well as electronically.

The court will afford plaintiff a final opportunity to litigate her case. Plaintiff shall serve initial disclosures **no later than October 14, 2005**. If she fails to serve those disclosures, defendants may renew their motion and the undersigned will immediately recommend to Judge Platt that the action be dismissed. Plaintiff is on further notice that any additional failures to comply with legitimate discovery requests will be deemed failure to comply with this order and may result in a recommendation that the case be dismissed.

The court will also afford plaintiff's counsel a final opportunity to avoid sanctions for failure to comply with the direct order of the court. Plaintiff's counsel shall, no later than October 14, 2005, register for electronic case filing and shall notify the undersigned in an electronically-filed letter when that registration is complete. Failure to comply with this order will result in the imposition of sanctions.

Finally, defendants are awarded \$200 as reasonable costs, including attorneys' fees, pursuant to Federal Rule 37 (a)(4)(A), the plaintiff having made no showing of substantial justification for her failure to timely provide initial disclosures.

Dated: Central Islip, New York  
September 30, 2005

/s/ William D. Wall  
WILLIAM D. WALL  
United States Magistrate Judge